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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,823	04/30/2001	Ted E. Dunning	085804-014501	5884

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GREENBERG TRAURIG, LLP
MET LIFE BUILDING
200 PARK AVENUE
NEW YORK, NY 10166

EXAMINER	
RETTA, YEHDEGA	

ART UNIT	PAPER NUMBER
3622	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/846,823	DUNNING ET AL.	
	Examiner	Art Unit	
	Yehdega Retta	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 May 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-97* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-97* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This office action is in response to after final argument filed May 7, 2007. Claims 1-97 are still pending.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 4-27, 32, 33, 39, 42-59, 62-85, 91 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosken U.S. Patent No. 6,438,579.

Regarding claim 1, Hosken teaches accepting item selection detected from a plurality of users; generating log containing identifiers for user's corresponding to detected user item selection; accepting query; scoring user logs, responsive to a degree of occurrence to the query item, so as to generate user log scores based exclusively on detected user item selections (implicit) and the at least one query item; determining at least one result item in a subset of scored user logs (see abstract, col. 2 line 52 to col. 3 line 34, col. 5 line 8 to col. 6 line 38 and col. 9 lines 23-65). Hosken teaches the implicit collaborative data is advantageously obtained from a user's self-directed actions of reviewing and considering different media content items. Further Hosken teaches thus the selection of items to review and the length and nature of the consideration of such item inferentially reflects the user's relative interest in particular media content items. Hosken also teaches confidence levels in the inferences drawn can also be developed and refined

through the continued monitoring of user actions in reviewing and considering the same and closely similar media content items (see col. 3 lines 16-33). On col. 5 lines 42-62, Hosken teaches the amount of time spent by a user reviewing information about the music a particular media item or the time spent listening to music clip provides implicit information regarding the interest level of the user Hosken filtering and weighting method provides scoring and determining a result, based on the number of times an item appears, i.e., an item with higher weight factor (see also fig. 7A –7C). Hosken also teaches that the explicit information provided by users provides high-confidence information that can be incorporated into the group and individualized collaborative data. Hosken teaches that implicit and explicit profiling data is used to provide recommendation (see col. 4 lines 44-67). Hosken discloses that the user may explicitly enter music items and ratings or the system may derive implicit ratings of music items based on system-based observations (detected) of user actions and the system making recommendation based on the input (see col. 14 lines 13-20). It would have been obvious to one of ordinary skill in the art at the time of the invention to implement selected features of Hosken. Omitting Hosken's collection of explicit user profile, by interviewing or surveying users, would cost less to operate the system. Also it would have been obvious to one of ordinary skill in the art to provide recommendation from implicit user profile only to those who are not willing to participate in the interview or survey of Hosken. It is also well settled that the elimination of an element or its functions is an obvious expedient if the remaining elements perform the same functions as before - *In re Karlson*, 136 USPQ 184, 186; 311 F2d 581 (CCPA 1963). Hosken provisional (60144377) teaches the user profile table (user profile, user profile rating) contains

identifying information about music items linked to a user, the information in this table can be provided using explicit rating information provided by the user **or** through implicit observation by the system **based on user's actions** (see page 6 par. 1-5) and providing recommendation based on the explicitly entered music items or implicit rating of music (see page 8 last par. And page 9).

Regarding claims 4-11, Hosken teaches video track or music track, generating track list containing an identifier for each determined result. Hosken teaches recommending music and video and other media content items based on similarity in profile between the user and other users (see abstract and col. 11 line 1 to col. 13 line 30 and col. 14 line 40 to col. 16 line 21).

Regarding claims 12 and 13, Hosken teaches accepting selection; input specifying an item purchase by user, provided via web page (see col. 3 lines 17-34, col. 4 lines 11-55, col. 5 lines 20-62).

Regarding claim 14, Hosken teaches defining a subset of the scored user logs (see col. 15 line 10 to col. 16 line 21).

Regarding claims 15-27, Hosken teaches monitoring user behavior and adjusting the user log ... outputting advertisement ...(see col. 5 line 20 to col. 6 line 67 and col. 8 line 38 to col. 11 line 19).

Regarding claims 32 and 33, Hosken teaches deleting item selected by user from the determining at least one result, ranking the result responsive to the degree of significance (see col. 16 lines 24-53).

Claims 39 and 59 are rejected as stated above in claim 1.

Claims 42-45 and 62-69 are rejected as stated above in claims 4-11.

Claims 70 and 71 are rejected as stated above in claims 12 and 13.

Claim 72 is rejected as stated above in claim 14.

Claims 46-58 and 73-85 are rejected as stated above in claims 15-27.

Claims 91 and 92 are rejected as stated above in claims 32 and 33.

Claims 2, 3, 28-31, 34-38, 40, 41, 60, 61, 86-90, 93-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hosken U.s. Patent No. 6,438,579 further in view of Lazarus U.S. Patent No. 6,430,539.

Regarding claims 2, 3, 40, 41, 60, 61 and 86 Hosken does not explicitly teach significance of occurrence being determined by a log of likelihood ratio analysis or a substantial equivalent of a log of likelihood ratio analysis, it is taught by Lazarus (see col. 22 line 19 to col. 25 line 53). Lazarus teaches use of a log of likelihood ratio or an equivalent analysis to determine significance of occurrence (see abstract, col. 4 lines 24-67 and col. 39 lines 13-53). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use Lazarus's predictive model in Hosken's recommendation system since a log of likelihood ratio or equivalent ratio analysis overcomes the problem of small count situations and have much better small count behavior while at the same time retaining the same behavior in the non-small count regions as taught by Lazarus (see col. 24 line 44 to col. 25 line 38).

Regarding claims 28-31, 34-38, 87-90, 93-97, Hosken teaches determining a total number of users, *each group containing information detected from implicit use behavior,* (see fig. 2 (70, 68, 64)); determining a subset of user, determining the items selected or

not selected by the subsets and use of correlation algorithm to determine the correlation between the cluster and the user (see col. 15 line 10 to col. 16 line 21). However Hosken failed to explicitly teach the correlation algorithm as a log likelihood ratio, it is disclosed in Lazarus (see abstract, col. 4 lines 24-67 and col. 39 lines 13-53). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to use Lazarus's predictive model in Hosken's recommendation system since a log of likelihood ratio or equivalent ratio analysis overcomes the problem of small count situations and have much better small count behavior while at the same time retaining the same behavior in the non-small count regions as taught by Lazarus (see col. 24 line 44 to col. 25 line 38). Hosken discloses that the user may explicitly enter music items and ratings or the system may derive implicit ratings of music items based on system-based observations of user actions and the system making recommendation based on the input (see col. 14 lines 13-20). It would have been obvious to one of ordinary skill in the art at the time of the invention to implement selected features of Hosken. Omitting Hosken's collection of explicit user profile, by interviewing or surveying users, would cost less to operate the system. Also it would have been obvious to one of ordinary skill in the art to provide recommendation from implicit user profile only to those who are not willing to participate in the interview or survey of Hosken.

Response to Arguments

Applicant's arguments filed December 14, 2006 have been fully considered but they are not persuasive. In view of Applicant's argument the rejection of "112" have been withdrawn. Regarding to the art rejection applicant argues that Hosken can only be

prior art by relying on the filing date of U.S. Provisional Application ('377), and Hosken '377 can only be relied on for its filing data if is provided full support, in compliance with 35 USC § 112, for the subject matter of Hosken relied-upon in the Office action. Examiner would like to point that the support in '377 was provided in the previous office action. Hosken '377 provides full support for the claimed subject matter.

Applicant asserts that although it has never formally been applied against the claims of the present application the Office Action references portions of Hosken '377 as disclosing elements of the claims. Applicant states that it is *respectively pointed out that Hosken '377 must first be shown to be prior art to the claims of the present invention before it can be applied against the claimed of the present application*. Examiner would like to point out that the provision application couldn't be formally used against claimed invention. According to MPEP:

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

DISCLOSURE REQUIREMENT

The later-filed application must be an application for a patent for an invention which is also disclosed in the prior application (the parent or original nonprovisional application or provisional application); the disclosure of the invention in the prior application and in the later-filed application must be sufficient to comply with the requirements of the first paragraph of 35 U.S.C. 112. See Transco Prods., Inc. v. Performance Contracting, Inc., 38 F.3d 551, 32 USPQ2d 1077 (Fed. Cir. 1994). The prior-filed application must disclose the common named inventor's invention claimed in the later-filed application in the manner provided by the first paragraph of 35 U.S.C. 112. See 37 CFR 1.78(a)(1). Accordingly, the disclosure of the prior-filed application must provide adequate support and enablement for the claimed subject matter of the later-filed application in compliance with the requirements of 35 U.S.C. 112, first paragraph.

Claiming the Benefit of Provisional Applications

Under 35 U.S.C. 119(e), the written description and drawing(s) (if any) of the provisional application must adequately support and enable the subject matter claimed in the nonprovisional application that claims the benefit of the provisional application. In New Railhead Mfg., L.L.C. v. Vermeer Mfg. Co., 298 F.3d 1290, 1294, 63 USPQ2d 1843, 1846 (Fed. Cir. 2002), the court held that for a nonprovisonal application to be afforded the priority date of the provisional application, "the specification of the provisional must contain a written description of the invention and the manner and process of making

and using it, in such full, clear, concise, and exact terms,' 35 U.S.C. § 112 ¶1, to enable an ordinarily skilled artisan to practice the invention claimed in the nonprovisional application."

Hosken '377 teaches accepting item selection (user choosing an item); generating user log (profile based on implicit and explicit rating data for music provided by users) containing identifiers (vectors) corresponding to detected user item (see pp 5 lines 6-20); accepting a query (selection) and scoring (correlating similarity between the user ratings and other users' rating and determining weigh for each item to give rating weight (see pp 11 line 4 to pp. 12 line 6) being responsive to a degree of occurrence of the item identifier in the user logs (weight for each item determined by multiplying the correlation with the rating to give the correlated rating weight (pp 8 lines 14-25); determining at least one result item (recommendation) (see pp 10-13 and abstract and fig. 2b to fig. 5).

Applicant requests clarification as to the status of claims 39, 46, 59, 73, 85, 91 and 92 whether these claims stand rejected under 35 U.S.C. 103(a), as the office does not present any specific grounds for rejection of these claims. Examiner accidentally excluded claim 39 and 59 from the final rejection however these claims were including in the non-final rejection. For that reason Examiner withdraw the last final rejection. The rest of the claims have already been addressed.

Applicant requests that the Examiner matches the cited section in Hosken '579 to '377. Examiner is aware that Hosken's '579 discloses more than the '377 provisional application and there is no need for the Examiner to compare the two documents.

Examiner has provided ample support in the provisional application for the claimed limitation. If Applicant is not satisfied with the cited section in the '377 then

Applicant should argue against the provisional application regarding the claimed limitation.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (571) 272-6723. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

YR

RETTA YEHDEGA
PRIMARY EXAMINER